U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-B-C-, INC.

DATE: JULY 17, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an accounting, bookkeeping and payroll services company, seeks to employ the Beneficiary as a market research analyst. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based "EB-2" immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Texas Service Center denied the petition on the grounds that the Petitioner did not establish that the Beneficiary had the requisite educational degree to meet the minimum requirement of the labor certification and to be eligible for classification as an advanced degree professional.

On appeal the Petitioner submitted some additional evidence. We issued a notice of intent to deny and request for evidence (NOID/RFE), to which the Petitioner has not replied.

Upon *de novo* review, we will dismiss the appeal with a finding that the Petitioner and the Beneficiary willfully misrepresented a material fact concerning the Beneficiary's education.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of U.S. workers similarly employed. *See* section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

II. ANALYSIS

A. Educational Requirements and Qualifications

For the purposes of classification as an advanced degree professional, "[*a*]*dvanced degree* means any U.S. academic or professional degree or foreign equivalent degree above that of baccalaureate." 8 C.F.R. § 204.5(k)(2). To qualify for the requested classification a beneficiary must also meet all of the education, training, experience, and other requirements of the labor certification by the petition's priority date.[1] *See* 8 C.F.R. § 103.2(b)(1).

The labor certification in this case specifies that the minimum educational requirement for the proffered position of market research analyst is a master's degree in business administration or a foreign educational equivalent. On the labor certification, the Petitioner and Beneficiary claim that the Beneficiary met this requirement with a degree in 2005 from the [redacted] in [redacted], Poland.

The Director denied the petition on the ground that the Petitioner did not show that the Beneficiary's diploma from [redacted] is equivalent of a U.S. master's degree. The Director cited evidence indicating that the degree was equivalent to a U.S. bachelor's degree. As such, the Director found that the Beneficiary did not meet the minimum educational requirement of the labor certification and was not eligible for classification as an advanced degree professional.

On March 27, 2018, we sent a NOID/RFE to the Petitioner. We noted that the labor certification requires a master's degree in the field of business administration, or a foreign educational equivalent, and that it asserts the Beneficiary meets this requirement with a master's degree in business administration from [redacted] As evidence of the Beneficiary's degree we noted that the following documentation had been submitted by the Petitioner:

- A partial copy of the Beneficiary's [redacted] Part B: Supplement" (in Polish with English translation) for the degree of *Magister* with a major and specialization in law and business administration, issued by [redacted] on [redacted] 2005; and
- The Beneficiary's academic transcript (in Polish with English translation) showing that she completed five years of coursework at [redacted] from 1999 to 2004.

While the diploma stated that the Beneficiary holds a *magister* with a major and specialization in "*prawa i administracja biznesu*" ("law and business administration") and the transcript and credentials evaluations submitted by the Petitioner indicate that the Beneficiary completed multiple courses in business, marketing, and finance, we noted in our NOID/RFE that the record also contains evidence of a different diploma which the Beneficiary provided to a U.S. school when she applied for an F-1 student visa in 2009. According to that diploma the Beneficiary earned a *magister* with a

[1] The priority date of a petition is the date the underlying labor certification is filed with the DOL. *See* 8 C.F.R. § 204.5(d). In this case, the priority date is April 5, 2012.

major and specialization in "*prawa*" (law) alone, rather than in law and business administration. Moreover, the academic transcript submitted to the U.S. school listed different coursework than the transcript submitted in this proceeding.

We advised the Petitioner that the authenticity of the diploma and transcript submitted in this proceeding were in doubt, and requested that the Beneficiary's original diploma and transcript be submitted to resolve the evidentiary conflict. With respect to the diploma submitted in this proceeding, we noted that the document is incomplete because it only contains "Part B: Supplement" without Part A. Accordingly, we requested that the complete original diploma be submitted.

The Petitioner was given 87 days to respond to the NOID/RFE. The 87-day response period expired on June 22, 2018, with no further evidence or communication of any kind from the Petitioner. The regulation at 8 C.F.R. § 103.2(b)(14) provides that failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition.

Since the Petitioner has not submitted the evidence requested by us to establish the authenticity of the diploma and transcript submitted in this proceeding and to verify the Beneficiary's field of study, the record does not show that the Beneficiary meets the minimum educational requirements of the labor certification or qualifies for classification as an advanced degree professional.[2]

B. Willful Misrepresentation of a Material Fact

In our NOID/RFE we also advised the Petitioner that if the evidentiary discrepancies regarding the Beneficiary's education were not resolved we could conclude that the documentation submitted was not credible and that the Petitioner and the Beneficiary willfully misrepresented material facts. We also advised that a finding of fraud or willful misrepresentation of a material fact may have multiple consequences in the immigration proceedings involving both the Petitioner and the Beneficiary. As indicated above, the Petitioner did not respond to our NOID/RFE.

A misrepresentation is an assertion or manifestation that is not in accord with the true facts.[3] An immigration officer will deny a visa petition if the petitioner submits evidence which contains false

[2] On appeal the Petitioner submitted two more evaluations of the Beneficiary's purported degree in law and business administration from which asserted that it incorporated the equivalent of a bachelor's and master's degree in law and business administration from an accredited college or university in the United States. However, without the original and complete diploma and transcript requested in our NOID/RFE to verify the authenticity of this degree, the credential evaluations have little evidentiary weight.

[3] The terms "fraud" and "misrepresentation" are not interchangeable. Unlike a finding of fraud, a finding of material misrepresentation does not require an intent to deceive or that the officer believes and acts upon the false representation. *See Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975). A finding of fraud requires a determination that the alien made a false representation of a material fact with knowledge of its falsity and with the intent to deceive an immigration officer. Furthermore, the false representation must have been believed and acted upon by the officer. *See Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956).

information. In general, a few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See Spencer Enterprises Inc. v. United States*, 345 F.3d 683, 694 (9th Cir., 2003). If a petition includes serious errors and discrepancies, however, and the petitioner fails to resolve those errors and discrepancies after an immigration officer provides an opportunity to rebut or explain, then USCIS will conclude that the facts stated in the petition are not true. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Beyond the adjudication of the visa petition, a misrepresentation may lead USCIS to enter a finding that an individual alien sought to procure a visa or other documentation by willful misrepresentation of a material fact. This finding of fact may lead USCIS to determine, in a future proceeding, that the alien is inadmissible to the United States based on the past misrepresentation.

Section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), provides as follows:

> Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

As outlined by the Board of Immigration Appeals, a material misrepresentation requires that the alien willfully make a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled. *See Matter of Kai Hing Hui*, 15 I&N Dec. at 289-90. The term "willfully" means knowing and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. *See Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979). To be considered material, the misrepresentation must be one which "tends to shut off a line of inquiry which is relevant to the alien's eligibility, and which might well have resulted in a proper determination that he be excluded." *Matter of Ng*, 17 I&N Dec. 536, 537 (BIA 1980).

Accordingly, for an immigration officer to find a willful and material misrepresentation in visa petition proceedings, he or she must determine that: 1) the petitioner or beneficiary made a false representation to an authorized official of the United States government; 2) the misrepresentation was willfully made; and 3) the fact misrepresented was material. *See Matter of M-*, 6 I&N Dec. 149 (BIA 1954); *Matter of L-L-*, 9 I&N Dec. 324 (BIA 1961); *Matter of Kai Hing Hui*, 15 I&N Dec. at 288. A misrepresentation made in connection with an application for a visa or other document, or for entry into the United States, is material if either:

> (1) the alien is excludable on the true facts, or
> (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded.

Matter of S & B-C-, 9 I&N Dec. 436, 447 (A.G. 1961). Accordingly, the materiality test has three parts. First, if the record shows that the alien is inadmissible on the true facts, then the misrepresentation is material. *Id.* at 448. If the foreign national would not be inadmissible on the true facts, then the second and third questions must be addressed. The second question is whether the misrepresentation shut off a line of inquiry relevant to the alien's admissibility. *Id.* Third, if the relevant line of inquiry has been shut off, then it must be determined whether the inquiry might have resulted in a proper determination that the foreign national should have been excluded. *Id.* at 449.

Applying the foregoing criteria to this case, we find as follows:

First, the record indicates that the Beneficiary and the Petitioner made a false representation to an authorized U.S. government official. A misrepresentation can be made to a government official in an oral interview, on the face of a written application or petition, or by submitting evidence containing false information. *See* INS Genco Op. No. 91-39, 1991 WL 1185150 (April 30, 1991). Whereas the Beneficiary submitted documentation in the F-1 visa proceeding indicating that she earned a degree in "law" from ESLA, in the I-140 proceeding she and the Petitioner provided documentation indicating that she earned a degree in "law and business administration" from ESLA. The transcripts submitted in connection with the two proceedings also differed substantially with respect to the coursework completed. Both sets of documents clearly cannot be correct, and neither the Petitioner nor the Beneficiary has resolved the discrepancies. As noted, if a petition includes serious discrepancies and the petitioner fails to resolve those discrepancies after being given an opportunity to rebut or explain, then USCIS will conclude that the facts stated in the petition are not true. *See Matter of Ho*, 19 I&N Dec. at 591. Based on the evidence of record, we find that the Beneficiary and Petitioner submitted evidence containing false information in support of the I-140 petition.

Second, we find that the misrepresentation was willfully made. There is no evidence that the Beneficiary did not provide both the diploma and the transcript submitted with her F-1 visa application and the different diploma and transcript submitted in support of the I-140 petition. Furthermore, the Petitioner, as noted, submitted the false diploma and transcript with the petition and has not made any attempt to explain the two sets of diplomas and transcripts in the Beneficiary's name, despite having the opportunity to do so.

Third, we find that the misrepresentation was material to the Beneficiary's eligibility. In order to establish eligibility for the benefit sought, the Petitioner must demonstrate that the Beneficiary has the education required by the terms of the labor certification through the submission of educational records, including diploma and transcripts. While the Beneficiary may not be ineligible based on the true facts, since the record is unclear as to the true nature of the Beneficiary's education, the Petitioner's failure to respond to the NOID/RFE shut off a line of inquiry relevant to the Beneficiary's eligibility because it prevented USCIS from determining the field of study, if any, in which the Beneficiary earned her degree. This inquiry into the Beneficiary's qualifications might have resulted in a proper determination that the Beneficiary is ineligible.

In accordance with the foregoing analysis, we conclude that the Petitioner and the Beneficiary have willfully misrepresented a material fact concerning the Beneficiary's post-secondary education in Poland.

III. CONCLUSION

We will dismiss the appeal because the Petitioner has not established that the Beneficiary has the requisite educational degree to meet the minimum requirements of the labor certification and to be eligible for classification as an advanced degree professional. We also find that the Petitioner and the Beneficiary willfully misrepresented material facts concerning the Beneficiary's education in Poland.

ORDER: The appeal is dismissed.

Cite as *Matter of M-B-C-, Inc.,* ID# 938561 (AAO July 17, 2018)